

REMARKS

Applicant respectfully requests reconsideration and allowance of claims 1-19 that are pending in the above-identified patent application. Claims 10-19 stand rejected. Claims 1-9 stand withdrawn. By the forgoing amendment, Applicant has amended the specification and claims 10 and 17. No new matter is added by the amendment. In view of the following discussion, Applicant submits that all pending claims are in condition for allowance.

Oath/Declaration:

At page 2 of the Office Action, the Examiner alleged that the oath or declaration is defective because non-initialed and/or non-dated alterations have been made to the oath or declaration. Applicant respectfully disagrees with the Examiner. Applicant submits that the declaration is sufficient as is because Applicant updated any biographical information *before* signing and dating the declaration. As such, Applicant submits that the declaration is in compliance with 37 C.F.R. §1.52(c) and MPEP §602.01, and respectfully requests that the Examiner's objection to the declaration be withdrawn.

Drawings:

At page 2 of the Office Action, the Examiner objected to the drawings as failing to comply with 37 C.F.R. §1.84(p)(5) because the drawings do not include the reference sign "Figure 4a". Applicant has amended paragraph [0021] of the specification to correctly recite "Fig. 4" instead of "Fig. 4a". As such, Applicant respectfully requests that the Examiner's drawing objection be withdrawn.

At page 3 of the Office Action, the Examiner objected to the drawings as failing to comply with 37 C.F.R. §1.84(p)(4) because the drawings use reference character "3" to refer to both "switch-over circuit" and "switch over branch". Applicant has amended paragraphs [0022-0024] and paragraph [0031] of the specification to correctly recite "switch-over branch and/or circuit 3" instead of "switch-over branch 3" or "switch-over circuit 3". As such, Applicant respectfully requests that the Examiner's drawing objection be withdrawn.

Specification:

At page 3 of the Office Action, the Examiner objected to the specification because paragraph [0021] of the specification refers to “Fig. 4a”. Applicant has amended paragraph [0021] of the specification to read “Fig. 4” as suggested by the Examiner. As such, Applicant respectfully requests that the Examiner’s specification objection be withdrawn.

Claim Objections:

At page 4 of the Office Action, the Examiner objected to claim 17 because claim 17 refers to claim 1. Applicant has amended claim 17 to read “claim 10, further comprising” as suggested by the Examiner. As such, Applicant submits that the claim informality no longer exists, and respectfully requests that the Examiner’s claim objection be withdrawn.

Claim Rejections – 35 U.S.C. §102:

At page 4 of the Office Action, the Examiner rejected claims 10-14 and 18-19 under 35 U.S.C. §102(b) as being anticipated by Czekajewski et al. (U.S. Pat. No. 4,947,339) (hereinafter referred to as “Czekajewski”).

Amended independent claim 10 recites “a sample loop with a defined volume is arranged in the reaction circuit, which for conveying the defined volume of the gas flow of the reaction circuit may be switched into the measurement circuit.”

Applicant submits that a significant aspect of the present invention is that a defined volume of gas is switched from the closed reaction circuit to the closed measurement circuit, and submits that Czekajewski does not disclose or suggest conveying a defined volume of gas as claimed. At pages 4 and 5 of the Office Action, the Examiner cited the Czekajewski respirometer 10 as both the closed measurement circuit and the closed reaction circuit. Applicant submits that the closed measurement circuit and the closed reaction circuit of the instant application are separate circuits connected via the sample loop as claimed. Indeed, the sample loop is “arranged in the reaction circuit” and “may be switched into the measurement circuit” to “convey the defined volume of the gas flow.” The claim language of amended independent claim 10 is further defined and supported in paragraph [0016] of the specification of the instant application, which recites “the reaction circuit and the measurement circuit are connected to one another via a sample loop which may be switched into the respective circuit. By way of this, one may convey a defined volume share from the reaction circuit into the measurement circuit in a simple manner.” (Emphasis added.) Indeed, the sample

loop connects the otherwise separate and closed measurement and reaction circuits to convey a defined volume of gas as claimed. Czekajewski does not disclose or suggest separate, closed reaction and measurement circuits connected via a sample loop for the conveyance of a defined volume of gas as claimed in the instant application. As such, Applicant submits that Czekajewski does not disclose or suggest each and every element of amended independent claim 10.

In view of the above, Applicant submits that amended independent claim 10 is patentable. As claims 11-14 and 18-19 depend from amended independent claim 10, and recite additional patentable features, the subject dependent claims are therefore likewise patentable. Accordingly, Applicant respectfully requests the Examiner's §102 rejection be withdrawn.

Claim Rejections – 35 U.S.C. §103

At page 7 of the Office Action, the Examiner rejected claims 15-16 under 35 U.S.C. § 103(a) as being unpatentable over Czekajewski in view of Rieblinger (DE 19528400). Applicant respectfully traverses the Examiner's rejection. The patentability of amended independent claim 10 was discussed above. Applicant has addressed the deficiencies of Czekajewski above, and submits that the teachings of Czekajewski and Rieblinger, alone or in combination, do not disclose or suggest using separate closed reaction and measurement circuits connected via a sample loop for the conveyance of a defined volume of gas as claimed in the instant application. Indeed, Rieblinger does not cure the deficiencies of Czekajewski discussed above. As dependent claims 15-16 depend from amended independent claim 10 and recite additional patentable features, the subject dependent claims are therefore likewise patentable. Accordingly, Applicant respectfully requests that the Examiner's §103 rejection be withdrawn.

At page 9 of the Office Action, the Examiner has rejected claim 17 under 35 U.S.C. § 103(a) as being unpatentable over Czekajewski in view of Inoue et al. (U.S. Pat. No. 5,358,876) (hereinafter referred to as "Inoue"). The patentability of amended independent claim 10 was discussed above. Applicant has addressed the deficiencies of Czekajewski above, and submits that the teachings of Czekajewski and Inoue, alone or in combination, do not disclose or suggest using separate closed reaction and measurement circuits connected via a sample loop for the conveyance of a defined volume of gas as claimed in the instant application. Indeed, Inoue does not cure the deficiencies of Czekajewski discussed above. As dependent claim 17 depends from amended independent claim 10 and recites additional patentable features, the subject dependent claim is therefore likewise

patentable. Accordingly, Applicant respectfully requests that the Examiner's §103 rejection be withdrawn.

In view of the foregoing, Applicant submits that the instant claims are in condition for allowance. Early and favorable action is earnestly solicited. The petition fee is enclosed herein. In the event there are any fees due and owing in connection with this matter, please charge same to our Deposit Account No. 11-0223.

Dated: March 21, 2008

Respectfully submitted,

By: s/Matthew B. Dernier/

Matthew B. Dernier

Registration No.: 40,989

KAPLAN GILMAN GIBSON & DERNIER LLP

900 Route 9 North, Suite 104

Woodbridge, New Jersey 07095

(732) 634-7634

Attorneys for Applicant